

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Petition of)	Application No. NUSF-77
The Nebraska Telecommunications)	
Association for Investigation)	
And Review of Processes and)	
Procedures Regarding the NUSF.)	

WINDSTREAM NEBRASKA INC. LIST OF ISSUES AND/OR COMMENTS

Windstream Nebraska Inc., Windstream Systems of the Midwest Inc., and Windstream of the Midwest, Inc., collectively referred to as (“Windstream”) respectfully file these comments in response to the Nebraska Public Service Commission’s (“Commission”) request for issues and/or comments entered in the March 10, 2010 procedural order this proceeding. The Commission opened this investigation based on a petition filed by the Nebraska Telecommunications Association (“NTA”) on January 14, 2010 requesting an investigation and review of the processes and procedures regarding the Nebraska Universal Service Fund (“NUSF”).¹ The NTA Petition properly acknowledged how the Commission through the establishment of the NUSF has placed this State on the forefront in the development of a state mechanism to supplement federal universal service support mechanisms to ensure that all Nebraskans, without regard to their location, have comparable accessibility to telecommunications services at affordable prices.² Since the establishment of the NUSF in 1999 the Commission has conducted a series of dockets to develop the policies, processes and procedures for the NUSF. This investigation is yet another necessary and needed review of the NUSF to ensure that it

¹ The Nebraska Public Service Commission then conducted a March 8, 2010 planning conference and then issued the March 10, 2010 Order Setting Procedural Schedule.

² NTA January 14, 2010 Petition page 1.

continues to meet its goals. Windstream looks forward to participating in this investigation.

INTRODUCTION

Windstream has been an active proponent of reforming the federal universal service mechanism. In December 2009, Windstream filed a detailed proposal of how the Federal Communication Commission (“FCC”) should modify the current federal universal service fund (“FUSF”) to more appropriately target universal service support and focus incremental support to be explicitly used to deploy broadband to unserved areas.³ Windstream also urges the Commission to be open minded to reforms that are needed to keep pace with the changes in the telecommunications marketplace and to advance the state and national goal of full broadband deployment. The FCC recently announced a set of goals in its National Broadband Plan and Windstream believes that the Commission needs to establish new goals for the NUSF and review what changes in processes and procedures are needed to accomplish the desired outcome.

The NTA Petition referenced comments that this Commission filed with the FCC recommending a set of issues that the FCC should consider in its Broadband investigation. The issues included:

- (1) “[A]ctively work with states in partnership to develop ideas and create innovative solutions to the challenges posed by barriers to broadband deployment;...
- (2) [E]stablish a contribution methodology that clearly defines the obligations of all providers; and, all providers regardless of technology must be included;
- (3) [Require that] [a]ll states should have a responsibility to supplement the federal mechanism and to compliment the universal service goals developed by the Commission;

³ Windstream, CenturyLink, Consolidated Communications, Frontier Communications and Iowa Telecommunications, December 7, 2009 FCC filing in National Broadband Plan Public Notice No. 19, Docket No. 96-45...

- (4) [Require that] [s]support should be targeted to high-cost areas where broadband services are not being deployed and would not be deployed absent universal service support;...[and]
- (5) [R]equire better reporting of high-cost and Lifeline/Link-up support to avoid potential misuse of universal service support monies.”⁴

Windstream agrees with the NTA that the above list of issues that the Commission posed to the FCC also should guide this Commission in this investigation. Although this list is not exhaustive and does not identify the level of detail required in an investigation of specific processes and procedures, it provides a framework for review. Also, it should be acknowledged that reform of the FUSF will likely occur over a multi-year transition period. Therefore this Commission will need to make modifications to the NUSF to stay in line with the changes in the FUSF. This will require an on-going review and adjustment process. The comments below follow the five issues the Commission proposed to the FCC, although Windstream addresses them in a different order than the Commission’s FCC filing.

NATIONAL AND STATE PARTNERSHIP TO ADVANCE BROADBAND DEPLOYMENT

The Commission needs to ask the fundamental question as to what has been and what should be the purpose and goal of the NUSF and how should the goals and purpose align with the National Broadband Plan. As the Commission is well aware, the FCC has indicated its intent to significantly revise and reform the current FUSF to eliminate the current funds over a possible ten-year transition period and to replace it with a more specific broadband deployment funding mechanism. The FCC will be conducting a

⁴ Nebraska Public Service Commission December 7, 2009 Comments filed at the FCC Docket Nos. 09-47, 09-51, 09137.

series of proceedings in 2010 and 2011 that will establish the transition to new funding mechanisms. The Commission, at this time, can only speculate what those FCC revisions will entail and how they will impact FUSF receipts to Nebraska. However, the Commission should in this investigation gather the appropriate information to not only make interim changes to the NUSF but also be in the best position to participate in the FCC 's National Broadband Plan proceedings. Windstream suggest the following questions/issues for consideration.

Specific Questions/Issues to Address:

1. Has the original purpose of the fund been accomplished and is there a need to re-purpose the fund? Windstream suggests that to the extent the original fund was designed to achieve universal voice penetration in the state, the answer is probably yes.⁵ As the FCC is changing its focus of FUSF policy from voice to broadband, Windstream suggests this Commission should do the same. However, as part of the transition to a more broadband focused NUSF, the continued funding for voice services in high-cost areas needs to be a vital part of any reform. Although the past and current NUSF processes have resulted in strong voice penetration, there are improvements that should be made as the Commission also addresses the challenges of incenting broadband deployment.

The NUSF procedures have evolved over time. Initially it funded access rate reductions and reasonable rate benchmarks to achieve universal service. The current distribution mechanism using the Support Allocation Methodology (“SAM”), the revenue benchmark and earnings constraints have evolved to a

⁵ FCC March 2009 Telephone Subscribership in the United States report Table 2, page 9 shows Nebraska's telephone penetration as of July 2008 at 95.6% which compares to 95.4% for the United States.

model that substitutes for the traditional rate making process. This may have been suitable in the past, but the Commission should address what changes in procedures are needed to better align the NUSF with incenting broadband deployment.

2. How many customers and areas of the state lack adequate broadband deployment and what is the funding need? The Commission has done a great deal of data gathering to understand what areas of the state have the greatest broadband need and should continue this effort. The Commission should estimate the level of investment that be necessary to achieve the goals set by the FCC and/or this Commission. Such information can identify where broadband gaps exist and determine why such gaps exist. For example, are certain carriers advantaged by the amounts of both federal and state USF that they receive allowing them to deploy broadband where other carriers receiving little or no USF cannot justify deployment? This information will not only be invaluable to determine possible transitions from the existing NUSF but will also assist the Commission in evaluating FCC reform proposals.
3. How should support be developed for high-cost areas where broadband services cannot be deployed? How should this complement the new FUSF model?
4. What is the appropriate transition from today's NUSF to a more direct broadband focused fund? The FCC has indicated its intent to provide a transition to a new broadband focused funding; the Commission should examine similar transition plans.
5. What is the best way to direct support to the high-cost areas through targeting?

NUSF SHOULD SUPPLEMENT FEDERAL UNIVERSAL SERVICE FUNDING

The current NUSF SAM model distribution mechanism determines support “through a multi-step process and depends on several factors – including household density in out-of-town service areas, per-line access revenue, earnings on net investment during a prior year, and level of NUSF support at the end of the interim program.”⁶

Support is determined by estimating cost and making adjustments for benchmark revenues, earnings and constraints caused by the size of the overall fund. The cost component is estimated by mathematical calculations, which use household densities from the Benchmark Cost Proxy Model at a very granular sub-wire center level.

Although the NUSF SAM model is very sophisticated, it is difficult to understand and to replicate for any individual company much less the entire fund.

How the NUSF SAM model supplements and relates to the current FUSF model is even more difficult to determine. The NUSF SAM model uses a detail model distribution to estimate different density costs within each wire center for all incumbent local exchange carriers’ (“ILEC”) wire centers in the state, whereas the current FUSF model uses a significantly different distribution for non-rural (Qwest and Windstream) carriers than rural carriers (the remaining ILECs in the state). Since the FUSF and the NUSF distribution calculations are so different it is difficult to determine whether the NUSF complements the FUSF process.

Windstream suggests that although the NUSF SAM model has been developed over a series of proceedings all with the good intention to more narrowly target support to high-cost areas, the NUSF SAM model has deviated significantly from the FUSF model

⁶ Parrino Strategic Consulting Group, Feb. 24, 2010 filing at the FCC in Docket No. 09-51.

and no longer provides the appropriate amount of “supplemental” support to the federal support. Windstream believes that this investigation should examine how the NUSF SAM model aligns with the FUSF model and if changes are needed to avoid the potential unintended consequences of carriers either being over compensated or under compensated with regard to total NUSF and FUSF funding. Potential modifications to the current NUSF SAM model may be appropriate in the short run while the FCC develops its long-term FUSF reform to a broadband approach and the NUSF will need to modify accordingly.

Specific Questions/Issues to Address:

1. How does the manner in which the NUSF SAM model estimate cost and distribute support compare to the FUSF model? Are there differences in the cost estimates between the NUSF and FUSF and are modifications to the NUSF SAM appropriate in the short term as the Commission establishes a long-term broadband funding mechanism?
2. Should the current NUSF SAM model be simplified and made more transparent so carriers have more ability to predict changes in support from year to year?
3. Should there be a change in NUSF modeling for non-rural and rural carriers to better align with how the FUSF model distributes support?

**SUPPORT SHOULD BE TARGETED TO HIGH-COST AREAS TO SUPPORT
BROADBAND DEPLOYMENT**

As discussed above, the NUSF SAM model does involve very detailed and geographically discreet targeting of support at a sub-wire center level. Since the NUSF

SAM model targets support at the sub-wire center level it “in theory” provides a more targeted tool than the FUSF model for identifying the highest cost areas where support is needed. However, the NUSF SAM model has one fundamental flaw as compared to the FUSF. The NUSF SAM model applies an earnings constraint to distributing support that the FUSF model does not. Windstream acknowledges that the appropriateness of the earnings constraint has been a much-debated issue in past NUSF proceedings, but it is ripe for review again.

Targeting of support to only high-cost areas is intended to assure that rates in high-cost areas remain comparable to those in urban areas. The model in theory has identified where support is needed most. However, the model then takes earnings above a threshold for the company’s entire operations in the state and reduces the support in the wire centers and sub-wire centers that need the support. The application of the earnings constraint in reality maintains the implicit support from low-cost areas to high-cost areas that the discreet NUSF SAM model intends to avoid. The impact of this constraint is to deny funding for investments in the rural networks that the NUSF is intended to support. The size or financial stability of the company serving rural networks should not be factored into determining the appropriate level of support.

As the Commission re-purposes its goals and use of NUSF funds to one that supports broadband to unserved areas, the earnings constraint will need to be revisited. In fact, while the Commission transitions the NUSF with the final FUSF program, a modification to the earnings constraint should be considered. Windstream suggests that if an earnings constraint is to be used at all, which it believes is not appropriate, that the current rules be modified to allow carriers an option to have the earnings constraint be

applied on the same basis that the overall cost and needed support is calculated, which is the wire center level.

As described above the current NUSF SAM model calculates support at a very granular level. Part of the history and reason for such granular support calculation was to assure that competitive local exchange carriers (“CLECs”) would not be incented to serve low-cost ILEC areas but receive a windfall because the ILEC was receiving NUSF support on a less granular basis, such as study area or even wire center level. The policy objective of such a granular approach is laudable, but has the process itself complicated the distribution beyond the benefits received by such a granular approach?

Specific Questions/Issues to Address:

1. Is the application of the current earnings constraint in determining NUSF support appropriate as the fund moves to a broadband focus fund?
2. Is it appropriate to allow carriers an option to present earnings constraint information at a wire center level in order to eliminate the unintended consequences of the current total company earnings constraint, which reduces or eliminates NUSF support to the high-cost areas that need it the most?
3. Is the current NUSF distribution process for CLECs competitively neutral?

CONTRIBUTION METHODOLOGY

Both the federal and state method of contribution funding should be reviewed in light of the continued decline in traditional voice revenue and the shift in focusing the customer’s value to the broadband connections. The federal contribution factor is at an all

time high of 15.30%⁷ of interstate retail revenues and the state contribution has maintained a constant 6.95% of intrastate telecommunications revenues. The FCC has taken an approach that has allowed fund distributions to increase, and therefore, on a quarterly basis adjusted the contribution factor to fund the needed distribution. It is well documented how the combination of increasing fund size and declining interstate retail revenue base has caused the factor to reach this level.

This Commission, however has taken a more responsible approach which is to keep the contribution percent constant (6.95%) and distribute only what can be funded. Although this has been fiscally prudent, it has caused the fund distributions to steadily decline from \$71 million in 2004 to less than \$50 million in 2010. This decline has consequences since the amount of distribution, not only in total but also to individual carriers can fluctuate from year to year and have become much less stable and predictable. As the Commission sets new goals for broadband deployment and quantifies the size of the funding need there may be a need to review what changes in funding contribution are necessary.

Specific Questions/Issues to Address:

1. What should the proper size of the fund be in order to accomplish the goals as set by the Commission for broadband deployment? As the FCC establishes a new FUSF distribution process, the Commission can quantify what the NUSF portion needs to be to achieve its goals.
2. What would the contribution factor need to be to fund the goals?
3. Is there a need to change from a revenue based contribution method to a telephone number or connections method, which assures that all users of the network

⁷ FCC Public Notice DA 10-427 released March 12, 2010.

contribute? The FCC will certainly be revisiting its contribution methodology and the Commission will need to monitor and evaluate whether the NUSF method should follow the FCC method.

4. What impact will a change in contribution methodology have on individual customers and is it fair and sustainable?

BETTER REPORTING OF HIGH-COST AND LIFELINE/LINK-UP SUPPORT TO AVOID MISUSE

As the FCC transitions the current FUSF and this Commission also moves to a more broadband focused funding to encourage deployment in unserved areas, the reporting and accountability will need to be revised. There could be different approaches to developing proper accountability. Windstream agrees that appropriate safeguards should be in place to ensure that recipients of universal service funds should use the funds for their intended purposes.

Specific Questions and/or Issues to Address:

1. Are changes needed to today's reporting requirements?
2. What changes are appropriate if and when broadband becomes a component of NUSF?

CLOSING

Windstream applauds the Commission in opening this investigation and attempting to get ahead of the reform that the FCC has announced in the context of its Broadband Plan. As the Commission itself has acknowledged in its own comments to the

FCC, there is a need for states to supplement the federal universal service mechanism and the states' goals need to complement the federal goals. Since the FCC will be undertaking its rulemaking proceedings over the next two years, at this time this Commission can only anticipate and make appropriate interim changes to best align the NUSF with future FUSF processes. This will take a joint effort of the FCC, state commissions and the industry to accomplish the goals. Windstream has set out some issues and questions that should be addressed in this proceeding and look forward to the opportunity to actively participate in this review.

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Respectfully submitted,

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